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THE SUPREME COURT OF THE UNITED STATES

No. 36

October Term, 1930.

THE LOUISIANA PUBLIC SERVICE COMMISSION, et als.,
Appellants,

vs.

TEXAS & NEW ORLEANS RAILROAD COMPANY, et als.,

Appeal from United States District Court, Eastern District of Louisiana, Baton Rouge Division.

STATEMENT AS TO JURISDICTION UNDER RULE 12.

PERCY SAINT.
WYLIE M. BARROW.
LEWIS L. MORGAN.
MICHEL PROVOSTY.
Solicitors for Appellants.

WYLIE M. BARROW,
Of Counsel.

RANIRES-JONES, BATON ROUGE

THE SUPREME COURT OF THE UNITED STATES

No. 804

October Term, 1930.

THE LOUISIANA PUBLIC SERVICE COMMISSION, et als., Appellants,

vs.

TEXAS & NEW ORLEANS RAILROAD COMPANY, et als.,

STATEMENT AS TO JURISDICTION UNDER RULE 12.

MAY IT PLEASE THE COURT:

In support of the jurisdiction of this court to review the above entitled cause on appeal, the appellants respectfully represent:

I.

This appeal is brought direct to the Supreme Court to review the final judgment [41 Fed. (2nd) 293] rendered in the United States District Court, Eastern District of Louisiana, Baton Rouge Division, by a special three judge court, composed of a circuit judge and two district judges.

This case was consolidated with the case in the same court numbered and entitled, "No. 202, Equity, Louisiana Public Service Commission et als., v. United States of America et als." (R-Vol. I. 130), and by a stipulation of counsel the record before the Interstate Commerce Commission filed in the consolidated cases is to be referred to insofar as the same may be relevant, material and competent in this case. (R-149.)

One opinion was rendered, ordering separate decrees. (R-151.)

The consolidated cases were heard finally on January 16, 1930. (R-146.)

The district court rendered a decree granting a perpetual injunction in this cause. (R-154.)

II.

That the Act of February 13, 1925, Chap. 229, Section 1, 43 Stat. 938, (United States Code Title 28, Sec. 380), provides that Section 266 of the Judicial Code is amended to read in part as follows:

> "A direct review by the Supreme Court of an interlocutory or final judgment or decree of a district court may be had where it is so provided in the following Acts or parts of Acts, and not otherwise:
>
> * * * * * *
>
> "An Act restricting the issuance of interlocutory injunctions to suspend the enforcement of the statute of a State or of an order made by an administrative board or commission created by and under

the statute of a State, approved March 4, 1913, which Act is hereby amended by adding at the end thereof, "The requirement respecting the presence of three judges shall also apply to the final hearing in such suit in the district court; and a direct appeal to the Supreme Court may be taken from a final decree granting or denying a permanent injunction in such suit."

III.

The decree sought to be reviewed was entered on the 11th day of June, 1930. (R-154.) The petition for appeal was presented on the 1st day of July, 1930. (R-155.) The time for filing the record and docketing the case was enlarged by various orders of the court until March 31, 1931. (R-166, 167, 168, 170.)

IV.

This is a case in which the Texas & New Orleans Railroad and twenty-four other railroads operating in that part of the State of Louisiana, west of the Mississippi River, including points on the east bank thereof, known as "western Louisiana," applied for and obtained an interlocutory injunction, (R-141), and afterwards a final injunction, (R-154), against Order No. 675 of the Louisiana Public Service Commission, an administrative board, (R-78), refusing to grant an application by said railroads, appellees, for authority to publish and apply on intrastate shipments of sand, gravel, crushed stone and shell between points in said western Louisiana the rates prescribed on such traffic by the Interstate Commerce Commission in its

order entered on the 3rd day of June, 1930; in its docket entitled "No. 17,000, Rate Structure Investigation, Part 11, Sand and Gravel, which embraced Docket No. 16,002, *R. A. Gibson* vs. *Kansas City Southern Railway Co., et als.*, Docket No. 18,702, *Tennessee-Arkansas Gravel Co.*, vs. *Missouri Pacific Railroal Company*, and various other dockets consolidated therewith." (155 I. C. C. 457, R-17.) The said order of the Louisiana Public Service Commission removed the descrimination found by the Interstate Commerce Commission to exist against interstate shippers and localities and against interstate commerce in that portion of western Louisiana on and north of the Vicksburg, Shreveport & Pacific Railroad (Now Illinois Central Railroad), described as "northern oLuisiana," by prescribing the same rates on intrastate traffic to, from and between points therein as prescribed by the Interstate Commerce Commission to apply on interstate commerce; but, for various reasons stated in its said order, refused to put into effect in that portion of western Louisiana south of said Vicksburg, Shreveport & Pacific Railroad, on intrastate traffic, the rates prescribed by the Interstate Commerce Commission's said order in said territory on interstate traffic.

The case brings into question the power and authority of the Interstate Commerce Commission to interfere with and set aside intrastate rates made by the Louisiana Public Service Commission in said western Louisiana, south of the Vicksburg, Shreveport & Pacific Railway, when there is

no finding or statement of evidence made by the Interstate Commerce Commission showing the cost of the service of transporting sand, gravel, crushed stone and shell, and related commodities, no finding or evidence before, or investigation by said Interstate Commerce Commission, as to the cost of the ferry transfer services at Mississippi River crossings for which specific arbitraries are fixed, no finding supported by evidence by said Commission, or statement of evidence showing that the said intrastate rates do operate as a real discrimination against, and obstruction to, interstate commerce, and also brings into question the power and authority of the Interstate Commerce Commission, by a regulation of commerce, to give a preference to the ports of one state (Texas), over those of another (Louisiana), in violation of Article 1, Section 9, Clause 6, of the Constitution of the United States. (Report and order of the Interstate Commerce Commission, 155 I. C. C. 247, R-17 et. seq.)

The case also involves the question, (a), whether a mere disparity between interstate and intrastate rates in western Louisiana in the described territory authorizes the Interstate Commerce Commission to set aside the intrastate rates, when there has been no investigation or finding under section 15a, of the Interstate Commerce Act, as amended by the Transportation Act, 1920, and,

(b), the right of the State of Louisiana, through the Louisiana Public Service Commission, to regulate and control its intrastate commerce, and,

(c), the right and authority of the Interstate Commerce Commission, in the absence of specific findings based upon substantial proof that the Louisiana intrastate rates on the aforesaid commodities in said territory do operate as a burden upon interstate commerce, to prescribe intrastate rates on sand, gravel, crushed stone and shell, in said western Louisiana.

By stipulation between respective counsel for appellants and appellees, approved by the Court July 21, 1930 (R-149) it was agreed that the issues in case No. 202, (*Louisiana Public Service Commission, et als., v. United States, et als.*) No. 804 on the docket of the Supreme Court, are the same as in this case, namely the validity of the order of the Interstate Commerce Commission of June 3, 1929, and the supplemental order of September 30, 1929, in said docket No. 17,000, Rate Structure Investigation, Part 11, etc., sand and gravel, and the record in docket No. 17,000, part 11, is omitted from the transcript in this cause for the reason that it is included in the transcript in said case No. 202 of the docket of the District Court, No. 804, October Term, 1930, of the docket of the Supreme Court.

The following decisions of this Court are believed to sustain jurisdiction of this appeal:

American Express Co. v. South Dakota, 244 U. S. 617, 61 L. Ed. 1352.
Arkadelphia Mill Co. v. St. Louis Swn. R. Co., 249 U. S. 134, 39 Sup. Ct. Rep. 237, 63 L. Ed. 517.

Ex Parte Buder, 271 U. S. 462, 70 L. Ed. 1036, 46 Sup. Ct. Rep. 461.
Moore v. Fidelity & Deposit Co., 272 U. S. 317, 71 L. Ed. 273.
Arkansas Railroad Commission v. Chicago R. I. & P. Ry. Co., 273 U. S. 597, 71 L. Ed. 1224, 47 Sup. Ct. Rep. 597.
Virginian Railroad Co. v. United States, 272 U. S. 658, 672, 71 L. Ed. 463, 471, 47 Sup. Ct. Rep. 724.
Clark v. Poor, 274 U. S. 554, 71 L. Ed. 1199.
Smith v. Wilson, 273 U. S. 388, 71 L. Ed. 699, 47 Sup. Ct. Rep. 385.
Wisconsin v. C. B. & Q. R. Co., 257 U. S. 563, 66 L. Ed. 371.
Florida Log Cases, —— U. S. ——, 72 L. Ed. ——, Adv. Ops. No. 5, 1930 Term, 212.

We respectfully submit that this court has jurisdiction of this appeal by virtue of the Act of February 13, 1925, 43 Stat. 938, United States Code, Title 28, Sec. 380, (Section 266, amended) of the Judicial Code.

Respectfully submitted,

PERCY SAINT.
WYLIE M. BARROW.
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Solicitors for Appellants.

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Of Counsel.

NOTE:—All references to the record are to the pages of the certified unprinted record prepared by the Clerk of the District Court, Eastern District of Louisiana, and on file with the Clerk of this Court. The record has not yet been printed.